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SUBJECT: NIGERIA: ELECTION TRIBUNALS (PART I)

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This cable provides background information addressing the election tribunal process resulting from grievances to the April 2007 gubernatorial, presidential, and legislative elections in Nigeria.

¶1. According to the Nigerian Constitution and 2006 Electoral Act, any aggrieved political party or candidate may contest the conduct or result of the April elections, including the gubernatorial and presidential races. Special election tribunals, located in the Federal Court of Appeal for the presidential election and in the State Court of Appeal for the gubernatorial election, have been established in the thirty six states and Federal Capital Territory (FCT) to entertain petitions. Should these election tribunals jettison any case on legal or technical grounds, the Electoral Act permits appellate courts, including the Supreme Court for the presidential race and the High Court for gubernatorial races, to hear the affected cases.

¶2. The President of the Federal Court of Appeal, Justice Abdullahi Umaru, appoints members of all election tribunals. At the federal level, cases are presided over by a Chief Magistrate and four other magistrates of the FCT Judiciary; at the state level, the Chief Magistrate of each of the thirty-six states submits names of two other serving judges to Justice Umaru for security vetting. Tribunal magistrates are posted to states other than their respective states of origin.

¶3. Petitioners, either individual candidates or political parties participating in the elections, receive up to thirty days from the announcement of election results to file their complaints with the respective tribunals. According to Section 145 of the Electoral Act, petitions may be filed on the following grounds:

-- That a person whose election is questioned was, at the time of the election, not qualified to contest the election;

-- That the election was invalid by reason of corrupt practices or non-compliance with the provisions of the

Electoral Act;

-- That the announced winner of the election was not duly elected by a majority of lawful votes cast at the election; or

-- That the petitioner or aggrieved candidate was validly nominated but was unlawfully excluded from the election.

¶4. Importantly, Section 146 (1) states that elections may not be invalidated or nullified if the election tribunal determines that elections were conducted "substantially" in accordance with the Electoral Act. The Electoral Act, Section 148 is equally ambiguous as to the time limit for which the election tribunals may entertain cases, noting only that such cases "shall be given accelerated hearing."

¶5. Ultimately, the election tribunals may dismiss any case. The courts may also choose to upend election results, thereby calling for fresh elections no later than 3 months after the court determines that new elections should be held or announcing as winner the candidate who scored the highest number of valid votes. The election tribunals may nullify elections based on the following grounds:

-- That a candidate who was declared the victor was not validly elected; or

-- That a candidate who was declared the victor was not validly elected on the ground that he did not receive the majority of valid votes cast at the election.

¶6. In addition to specifying the parties or candidates interested in presenting a petition before the election tribunals, petitioners must also conclude their petitions with a "prayer or prayers" according to the Electoral Act. Examples of prayers include that the petitioner "be declared

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validly elected or returned, having polled the highest number of lawful votes cast at the election or that the election may be declared nullified." Petitions must be accompanied by a list of witnesses the petition intends to call and a list of documents petitioners will rely upon at the actual hearing of the petition. Petitioners may approach the election tribunal to "compel" INEC to allow them to inspect vital elections-related documentation, including tally and result sheets, ballot papers, copies of voter registers, and lists of staff employed at polling stations during the April elections.

¶7. (SBU) Petitions from aggrieved candidates or political parties, including main opposition presidential candidates Muhammadu Buhari (ANPP) and Atiku Abubakar (AC), have been filed across Nigeria's thirty-six states and the FCT. Almost three months after INEC announced winners of the April gubernatorial and presidential elections, most election tribunals throughout Nigeria have yet to convene. Complainants fear that the ambiguity and interpretive latitude inherent in the 2006 Electoral Act, which neither stipulates a time limit for cases to be heard nor defines the extent to which elections must be proven to have been conducted irregularly to warrant nullification of results, may inhibit their ability to receive a truly free trial. Skepticism also abounds as to the nonpartisan, independent nature of the Federal Court of Appeal, which some regard as thoroughly compromised.

CAMPBELL